

### **Remarks**

This Response is provided in response to a non-final Office Action mailed September 22, 2004. The Office Action rejected claim 10 under 35 U.S.C. §112, second paragraph, rejected claims 1-12, 15, 16, and 19-32 under 35 U.S.C. §102(b) as being anticipated over prior art, and rejected claims 13, 14, and 17, 18 under 35 U.S.C. §103(a) as being unpatentable over prior art.

### **Objections to the Specification**

In response to the objection to the specification, the Applicant has amended the specification to obviate the informalities pointed out by the Examiner that include clarifications to references to Fig. 1, which are now specified as either 1(a) or 1(b); and corrections to certain reference numerals (i.e. route comparator 182), etc., to ensure proper agreement between the drawings and the specification. No new matter has been introduced by the amendments to the specification.

### **Rejection of Claim 10 Under 35 U.S.C. §112**

The Office Action rejected claim 10 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. To obviate this rejection, the Applicant has added the definition for the term “diffserv” beginning at line 5, page 10, of the specification, to better enhance an understanding of the term by any person skilled in the art.

### **Rejection of Claims Under 35 U.S.C. §102(b)**

The Office Action further rejected claims 1-12, 15-16, and 19-32 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,999,536 issued to Mitsuhiro Kawafuji et al., December 7, 1999 (Kawafuji '536). The Applicant respectfully traverses the foregoing rejection and submits that the claimed invention as claimed on May 02, 2001 is, under 35 U.S.C. 102(b) patentable over Kawafuji '536 “as

every element of the claimed invention,” *see, In re Bond*, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), is not identically shown Kawafuji ’536.

#### INDEPENDENT CLAIM 1

Kawafuji ’536 fails to show the claim elements “*determining, in accordance with the monitored identifying information, whether any preferred routing information exists for the flow; and if preferred routing information exists, sending updated routing tables to the router incorporating the updated routing information,*” of Applicant’s independent claim 1.

Kawafuji ’536 shows “If the packet satisfies the predetermined conditions, and DA<sub>IP</sub> has already been registered,” (col. 8, lines 32 and 33), which the Applicant submits substantially meets the second element of Applicant’s claim 1, (*i.e., determining, in accordance with the monitored identifying information, whether any preferred routing information exists for the flow*). However, Kawafuji ’536 goes on to show “the router 20 causes the routing section 30 to update the TTL value and check sum of the IP header portion of the packet, and reads out, from the memory table 23, the MAC address (R.sub.21) and the interface number (2) which correspond to DA<sub>IP</sub> [192.168.21.5] determined by the registration determination means 29 as an already registered address.” (col. 8 lines 33-39). Kawafuji ’536 fails to show the third element of Applicant’s claim 1, (*and if preferred routing information exists, sending updated routing tables to the router incorporating the updated routing information.*) In other words Kawafuji ’536 shows that the routing section updates information fields of the packet, but does not update the routing tables.

Kawafuji ’536 shows updating routing table 11 and the ARP table 12, as needed, and registers DA<sub>IP</sub> in the memory table 23, if it is determined in step S12 that the received packet does not satisfy the predetermined conditions. (col. 8, lines 45-55). That is, Kawafuji ’536 shows that updates are made to the routing tables, only when the preferred routing information does not exist. The Applicant’s claim 1, specifically includes the limitation of updating the routing tables, only when the preferred routing information does exist.

Accordingly, the Examiner has failed to provide a prima facie case of anticipation by Kawafuji '536 of the Applicant's invention as claimed by claim 1. Therefore, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 1, as well as reconsideration and withdrawal of the rejections to claims 2-28 depending therefrom, and passage of claims 1-28 to allowance.

#### INDEPENDENT CLAIM 29

The Applicant notes that the claim limitations for independent claim 29 calls for an *“apparatus configured to determine, in accordance with the monitored identifying information, whether any preferred routing information exists for the flow; and apparatus configured to, if preferred routing information exists, send updated routing tables to the router incorporating the updated routing information.”* That is an apparatus that updates the routing tables, only when the preferred routing information does exist. Whereas, Kawafuji '536 shows an apparatus that updates the routing tables, only when the preferred routing information does not exist, therefore, Kawafuji '536 fails to identically show every element of the claimed invention.

Accordingly, for substantially the same reasons given hereinabove for traversal of the rejection of claim 1, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 29, as well as reconsideration and withdrawal of the rejections to claims 30-32 depending therefrom, and passage of claims 29-32 to allowance.

#### Rejection of Claims 17 and 18 Under 35 U.S.C. §103(a)

The Office Action further rejected claims 17 and 18 under 35 U.S.C. §103(a) as being unpatentable over Kawafuji '536 in view of the admitted prior art. This rejection is respectfully traversed.

Kawafuji '536 fails, either alone or in combination with information presented by the Applicant in the background section of the present application, to teach or suggest the claim elements *“determining, in accordance with the monitored identifying information, whether any preferred routing information exists for the flow; and if preferred routing*

*information exists, sending updated routing tables to the router incorporating the updated routing information,”* of Applicant’s independent claim 1.

Kawafuji ’536 teaches and suggests that updates are made to the routing tables, only when the preferred routing information does not exist. (col. 8, lines 32-55) The Applicant’s claim 1, specifically includes the limitation of updating the routing tables, only when the preferred routing information does exist. Accordingly, because the Applicant’s claim 1 is an allowable claim, and claims 17 and 18 depend from allowable claim 1 (and serve to add further limitations to allowable claim 1), claims 17 and 18 are not unpatentable over Kawafuji ’536 in view of the admitted prior art under 35 U.S.C. §103(a). Therefore, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 17 and 18 under 35 U.S.C. §103(a), and passage of claims 17 and 18 to allowance.

#### **Rejection of Claims 13 and 14 Under 35 U.S.C. §103(a)**

The Office Action further rejected claims 13 and 14 under 35 U.S.C. §103(a) as being unpatentable over Kawafuji ’536 in view of United States Patent No. 6,147,993 issued to Ray Kloth et al., November 14, 2000 (Kloth ’993). This rejection is respectfully traversed.

Neither Kawafuji ’536 alone or in combination with Kloth ’993, teaches or suggests the claim elements “*determining, in accordance with the monitored identifying information, whether any preferred routing information exists for the flow; and if preferred routing information exists, sending updated routing tables to the router incorporating the updated routing information,”* of Applicant’s independent claim 1.

Kawafuji ’536 teaches and suggests that updates are made to the routing tables, only when the preferred routing information does not exist. (col. 8, lines 32-55) The Applicant’s claim 1, specifically includes the limitation of updating the routing tables, only when the preferred routing information does exist. The deficiencies of Kawafuji ’536, i.e., updating routing tables, only when the preferred routing information does not exist, fail to be cured by Kloth ’993, because Kloth ’993 also fails to teach or suggest; updating the routing tables, only when the preferred routing information does exist, as claimed by Applicant’s claim 1.

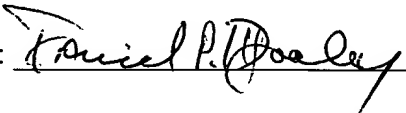
Accordingly, because the Applicant's claim 1 is an allowable claim, and claims 13 and 14 depend from allowable claim 1 (and serve to add further limitations to allowable claim 1), claims 13 and 14 are not, under 35 U.S.C. §103(a), unpatentable over Kawafuji '536, in view of Kloth '993. Therefore, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 13 and 14 under 35 U.S.C. §103(a), and passage of claims 13 and 14 to allowance.

**Conclusion**

The Applicant respectfully requests reconsideration and allowance of all of the claims pending in the application. This Response is intended to be a complete response to the non-final Office Action mailed September 22, 2004.

Should any questions arise concerning this response, the Examiner is invited to contact the below listed Attorneys.

Respectfully submitted,

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